

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

MISSION OF THE IMMACULATE VIRGIN
FOR THE PROTECTION OF THE HOMELESS
AND DESTITUTE CHILDREN
Employer¹

and

RUFUS SAYWATT

Petitioner

Case No. 29-RD-1125

and

LOCAL 971/550, NATIONAL SECURITY
OFFICERS BENEVOLENT ASSOCIATION
Union²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (“the Act”), a hearing was held before Lilliam Perez, a Hearing Officer of the National Labor Relations Board (“the Board”).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

¹ The Employer’s name appears as amended at the hearing.

² Local 971/550 National Security Officers Benevolent Association (“the Union”) is the recognized collective bargaining agent for security guards employed by the Employer. The Union’s most recent contract was effective from July 1, 2005, to June 30, 2008. The Union’s name was amended at the hearing to add “550” to the local union number. I hereby further amend the Union’s name, sua sponte, to reflect the Union’s name as it appears in the parties’ 2005 – 2008 contract.

The record indicates that the Region made numerous, unsuccessful attempts to reach the Union, both by telephone and by mail. The Union did not appear for the hearing.

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The record indicates that Mission of the Immaculate Virgin for the Protection of Homeless and Destitute Children (“the Employer”) is a domestic corporation, with its principal office and place of business located at 6581 Hylan Boulevard, Staten Island, New York. The Employer provides social services for homeless and destitute children. During the past year, which period represents its annual operations generally, the Employer derived gross revenues in excess of \$250,000, and purchased and received at its Staten Island facility, goods and materials valued in excess of \$5,000 directly from points outside the State of York.

Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The record indicates that Local 971/550 National Security Officers Benevolent Association (“the Union”) is a labor organization as defined in Section 2(5) of the Act. The Union is the recognized collective-bargaining representative of security guards employed by the Employer. I hereby find that the Union is a labor organization as defined in Section 2(5) of the Act, and that it is qualified to represent guards within the meaning of Section 9(b)(3) of the Act.

4. A question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The record indicates, and I hereby find, that the following employees constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time security guards employed by the Employer at its facility located at 6581 Hylan Boulevard, Staten Island, New York, but excluding all other employees and supervisors defined in Section 2(11) the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Local 971/550 National Security Officers Benevolent Association. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Those in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **January 29**,

2009. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **February 5, 2009**. The request may **not** be filed by facsimile.

The parties are advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described Request for Review electronically, please refer to the guidance which can be found under "E-Gov" on the National Labor Relations Board website: www.nlr.gov.

Dated: January 22, 2009.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201